HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No.9242 of 2004

Between:

P.Vigneswar & another. …Petitioners.

AND

State Bank of Hyderabad rep. by
its Branch Manager, Sultan Bazar,
Hyderabad & others. …Respondents.

:: O R D E R ::

Counsel for the Petitioners : Mr.D.V. Sitharam Murthy

Counsel for Respondent No.1 : Mr.K.V.Simhadri

Counsel for Respondent Nos.2 & 3: Mr.A.Rajashekar Reddy
Asst. Solicitor General

3rd JANUARY 2006

Per G.S.Singhvi, CJ

In this petition, the petitioners have prayed for quashing recovery certificate issued by Debts Recovery Tribunal, Hyderabad (for short 'the Tribunal') in furtherance of order passed in O.A.No.124 of 2002. They have also prayed for quashing the

consequential action taken by the respondents for selling the property bearing No. D.4-6-405, Esamia Bazar, Hyderabad.

On 25-5-2004, "Rule nisi" was issued and proceedings initiated by State Bank of Hyderabad for recovery of the amount due to it were stayed subject to the condition of deposit of Rs.6 lakhs by the petitioners. On 21-6-2004, the Court took cognizance of the fact that the petitioners have deposited Rs.6 lakhs and directed that the ad-interim order shall continue till further orders. Thereafter, the case was listed on 5-12-2005. On that date counsel for the petitioners sought time for filing rejoinder affidavit. While adjourning the case, the Court asked the learned counsel for the parties to come prepared on the issue of maintainability of the writ petition in view of availability of the statutory alternative remedy under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the Act'). On the next date of hearing i.e., 2-1-2006, learned counsel for the Bank sought time to ascertain whether or not the purchaser has deposited 1/4th price. Learned counsel for the writ petitioners was also given time to seek instructions from his clients.

Today, Sri M.V.Simhadri, learned counsel representing the Bank has filed affidavit of Sri B.Bhaskara Sastry, Chief Manager of Asset Recovery Branch, State Bank of Hyderabad. The relevant extracts of which are reproduced below:

> "I respectfully submit consequent on the auction sale notification dated 10-04-2004 in Andhra Jyothi Telugu daily newspaper in respect of the residential house property, the auction was conducted on 14-05-2004 at Hyderabad. The reserve price was fixed for Rs.6,00,000/- and the auction was concluded for Rs.6,90,000/- as a highest bid amount in favour of Sri Mahendra Kumar Shah, R/o.4-3-440/441, Neer Mahek Kunj, Bank Street, Koti, Hyderabad. The said Mahendra Kumar Shah has deposited an amount of Rs.1,80,000/- towards 25% of the bid amount into the Debts Recovery Tribunal, Hyderabad, to the credit of the O.A., immediately. In turn, the Debts Recovery Tribunal, Hyderabad by way of a cheque for Rs.1,73,090/- drawn on State Bank of India, Hyderabad Main Branch vide cheque bearing No.196439 dated 18-05-2004 in favour of the State Bank of Hyderabad, Sultan Bazar Branch, Hyderabad, to the credit of O.A.No.124 of 2002 (R.P.No.186 of 2002). The remaining bid amount Rs.5,16,910/- was also deposited by the auction purchaser within the time permitted by the Recovery Officer i.e., 31-05-2004. Consequent on the order passed by this Hon'ble Court on 18-05-2004 in W.P.M.P.No.11872 of 2004 in W.P.No.9242 of 2004, the amount that was received by the Bank has been returned to the Debts Recovery Tribunal, Hyderabad as per the directions of the DRT, Hyderabad in view of the stay of confirmation of sale. The third party auction purchaser was not made as a party. All the details and auction records are with the learned Recovery Officer, i.e., respondent No.2.

I respectfully submit the following are the amounts to be recovered from the petitioners/judgment debtors:

The claim of O.A. Rs. 4,71,077.50 p.

Interest from 22-10-1986 to Rs.10,83,480.00 p.

31-12-2005 @ 12%

Costs Rs. 30,839.00 p.

Costs of auction including

publication, circulation of

pamphlets Rs. 3,583.00 p.

Total liability as on 31-12-2005 : Rs. 15,88,979.50 p.

---"

Learned counsel for the petitioners made some submissions and then made a request that his clients may be permitted to withdraw this writ petition with liberty to avail alternative remedy under the Act. He also prayed that the respondents may be directed not to confirm the sale for a period of fifteen days within which his clients may avail the alternative remedy.

In the peculiar facts of the case, we accept the request of the learned counsel for the petitioners and dismiss the petition with liberty to them to avail alternative remedies under the Act. We also direct that for a period of fifteen days the sale conducted by the respondents shall not be confirmed. At the same time, we make it clear that if the petitioners do not file appeal or avail other remedies within fifteen days from today, then the respondents shall be entitled to confirm the sale and take other appropriate proceedings for recovery of the balance amount. No costs.

G.S. SINGHVI, CJ

3rd January, 2006.

R.SUBHASH REDDY, J.

ARS / svs